

**UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
SHELBY DIVISION**

|                     |   |                    |
|---------------------|---|--------------------|
| IN RE:              | ) | Case No.: 09-40314 |
|                     | ) | Chapter 11         |
| DONALD YELTON and   | ) |                    |
| JOAN YELTON         | ) |                    |
|                     | ) |                    |
| S.S. #: xxx-xx-4574 | ) |                    |
| xxx-xx-2354         | ) |                    |
|                     | ) |                    |
| Debtor(s)           | ) |                    |

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**MOTION TO APPOINT CHAPTER 11 TRUSTEE OR CONVERT TO CHAPTER 7**

The Office of the Bankruptcy Administrator for the Western District of North Carolina moves the Court for an order appointing a Chapter 11 Trustee or converting the case to Chapter 7 and says:

1. This is a Chapter 11 proceeding in which a voluntary petition was filed on or about April 17, 2009.
2. On April 21, 2009, an Operating Order was entered in this case. That Order provided, in part, that the debtors file Monthly Status Reports with the Court, pay Chapter 11 Quarterly Fees, provide copies of valid insurance policies to the Bankruptcy Administrator's Office and file a Disclosure Statement and Chapter 11 Plan of Reorganization.
3. The debtors have failed to file Monthly Status Reports for April through June 2009. As such, it is impossible to determine the likelihood of any reorganization plan the debtors might file.
4. The debtors have failed to pay quarterly fees for the second quarter 2009.
5. According to the debtors' Schedules filed with the Court, the debtors' real property includes nursing home facilities, single family residences and apartment buildings.
6. According to the proceedings memo from the Meeting of Creditors held on June 12, 2009, the debtor, Jane Yelton, indicated that she did have insurance and would provide the same to the Office of the Bankruptcy Administrator. No insurance information has been provided.
7. On or about June 18, 2009, Marvin Sparrow, attorney for Loretta Johnson and Ashley Smith, filed a *Motion to Set Aside Fraudulent Transfer*, which alleged:

- a. That the debtors had transferred real property located at 5023 US Highway 64, Spindale, North Carolina.
  - b. That the tax value of the property was \$154,300.
  - c. That the deed was recorded on May 20, 2009.
8. Property located on the west side of U.S. Highway 64 in Rutherford County, North Carolina was subject to the following conveyances:
  - a. On April 27, 2005, three tracts of real property were conveyed from Donald, Joan and Jamie Yelton to Stephen and Amelia Scala by deed recorded in Book 871, Page 615, Rutherford County, North Carolina Register of Deeds (Deed 1).
  - b. On August 25, 2005, tract three from Deed 1 was conveyed from Stephen and Amelia Scala to Donald and Joan Yelton by deed recorded in Book 881, Page 256, Rutherford County, North Carolina Register of Deeds (Deed 2). This Deed included the notation, "The purpose of this deed is to correct that deed recorded in Deed Book 871 at page 615 in that tract three should have not been conveyed."
  - c. On May 20, 2009, tract three from Deed 1 and Deed 2 was conveyed from Donald and Joan Yelton to Jamie Yelton by deed recorded in Book 982, Page 561, Rutherford County, North Carolina Register of Deeds (Deed 3). This Deed included the notation, "This (sic) purpose of this deed is to correct the grantee in Deed Book 881 at Page 256, RCR, it was intervertly (sic) deeded incorrectly."
9. Deed 3 was signed and recorded post-petition and without order of this Court. In addition, if Deed 3 was intended to correct Deed 2, then Deed 3 should have conveyed the property from Donald and Joan Yelton to Donald, Joan and Jamie Yelton. Instead, Deed 3 purports to convey all of the debtors' interest in tract three to Jamie Yelton.
10. On May 29, 2009, the debtors filed Schedule A with the Court which does not list real property located at 5023 US Highway 64. However Schedule D lists a debt to First National Bank in the amount of \$225,000 secured by property located at 5023 US 64 Highway, Forest City, NC. In addition, Schedule E lists a debt to the Rutherford County Tax Collector in the amount of \$926.02 for *2008 Real Property Taxes for 5023 US 64 Hwy.*
11. The debtors' plan and disclosure statement will be due on or about August 15, 2009.
12. The undersigned moves to appoint a Chapter 11 Trustee or convert the debtors' case based on the debtors' failure to comply with the terms of this Court's Operating Order in that the debtors have failed to file monthly status reports, failed to pay quarterly fees and failed to provide copies of valid insurance policies for the debtors'

estate. It also appears that the debtors have transferred, post-petition and without Court order, property of the estate.

Wherefore, the undersigned moves the Court to appoint a Chapter 11 Trustee or convert this case and for such other and further relief as the Court deems just and proper.

Dated: August 4, 2009.

/s/ Linda W. Simpson

Linda W. Simpson

Office of the Bankruptcy Administrator

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| <b>S.S. #:       xxx-xx-4574</b>         | ) |                           |
| <b>xxx-xx-2354</b>                       | ) |                           |
|  | ) |                           |
| <b>Debtor(s)</b>                         | ) |                           |

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**CERTIFICATE OF SERVICE**

The undersigned certifies that the pleading(s) or paper(s) to which this Certificate is affixed was served upon the party(s) to this action listed below by depositing a copy of the same, enclosed in a first-class postpaid, properly addressed wrapper, in a Post Office or official depository under the exclusive care and custody of the United States Postal Service and/or by means of the Electronic Filing System of the Bankruptcy Court on August 4, 2009.

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1498 Whitesides Road  
Forest City, NC 28043

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